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CITATIONS

Case:

Lynch v. *United States*, No. 855, October Term, 1933.... 2, 3, 4, 5

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 861

SAM WILNER, IN HIS OWN RIGHT AND AS ADMINISTRATOR of the Estate of Meyer Wilner, deceased, petitioner

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court rendered a memorandum opinion (R. 8–12), which is unreported. The opinion of the Circuit Court of Appeals (R. 21–26) is reported in 68 F. (2d) 442.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 12, 1934. (R. 26.) The petition for a writ of certiorari was filed March 14, 1934, and granted April 9, 1934. The jurisdiction of this Court is invoked under Section 240 (a) of

the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 17 of the Economy Act of March 20, 1933, deprived the courts below of jurisdiction to entertain a suit against the United States on a contract of yearly renewable term insurance issued under the War Risk Insurance Act of 1917.

STATUTES INVOLVED

These are set forth in the brief in *Lynch* v. *United States*, No. 855.

STATEMENT

The petitioner commenced this suit in the District Court April 28, 1933 (R. 2), in his own right and as administrator of the estate of Meyer Wilner, deceased, to recover total permanent disability and death benefits alleged to be due under a contract of yearly renewable term insurance issued to Meyer Wilner during service in the United States Army between September 19, 1917, and March 31, 1919. (R. 1–6.) Meyer Wilner died intestate May 15, 1929. (R. 2.)

The petition as amended (R. 12) alleged further: that the insured became totally and permanently disabled on April 15, 1919 (R. 4); that a demand for insurance benefits was made by the insured November 15, 1928, and by the petitioner May 17, 1929 (R. 4); that no decision was reached by the Veterans' Administration until April 7, 1933; that

then the petitioner was informed that by reason of Section 17 of the Act of March 20, 1933, the Veterans' Administration was without authority to take any action on the claim (R. 5). The petition alleged that the said Act was unconstitutional and void as an attempted delegation to the President of legislative powers contrary to Section 1, Article I of the Constitution, and also that it deprived petitioner of property without due process of law contrary to the Fifth Amendment. (R. 5.)

The respondent filed a general demurrer to the petition (R. 7) which was sustained by the District Court (R. 8–12) and the suit dismissed with costs for want of jurisdiction (R. 13). The Circuit Court of Appeals reversed as to the costs, and directed a dismissal for want of jurisdiction without costs. (R. 21–26.)

ARGUMENT

The main questions for decision in this case are the same as those in *Lynch* v. *United States*, No. 855.

In this case, as in that, the suit was in the District Court under the jurisdiction conferred by Section 19 of the World War Veterans' Act, as amended (petitioner's brief p. 2), which had been repealed before the suit was filed. (R. 2.) In this case also the suit could not have been under the Tucker Act (even if that Act were generally applicable), because it was for more than $10,000 (R. 6), and because the claim is alleged to have matured, by total and permanent disability suffered April 15,

1919, more than six years before the suit was filed. (R. 4.)

The argument made in Point I of the brief for the United States in No. 855 is therefore wholly applicable, and we beg leave to refer to it instead of repeating it at length.

The present petitioner does not seriously dispute the proposition that Congress could withdraw the consent of the United States to be sued on yearly renewable term insurance contracts "by an act devoted to the single purpose of such withdrawal" (petitioner's brief p. 20) but contends that because such withdrawal of consent is part of the general repeal of all laws relating to such insurance, which general repeal the petitioner contends violates the Fifth Amendment, therefore the whole falls.

The difficulty with this is that consent to be sued has clearly and intentionally been withdrawn. (See the legislative history attached as Appendix II to the brief in No. 855.) This being so, and the withdrawal of consent to be sued being unmistakably within the power of Congress, it does not matter what else Congress did at the same time. Consent to be sued, and with it jurisdiction, having been withdrawn, the Court had no power to consider the case further than to dismiss it for lack of jurisdiction, and could never reach the point of considering the other action that the Congress took.

The same applies, with equal force, to the other argument made by the petitioner (brief, pp. 23–42), that other portions of the Act of 1933 contain

unconstitutional delegations of legislative power. In reference to yearly renewable term insurance contracts the provisions of the Act are wholly definite, and delegate nothing whatever to the President. It is clear that the petitioner has no standing to raise the other questions, in which he has no interest, and we therefore refrain from discussing these questions on the merits.

Point II of the Government's brief in No. 855 is not applicable here, for the petition here alleges that the claim of total permanent disability was filed with the Veterans' Bureau November 15, 1928, and was not acted upon prior to the Act of March 20, 1933. (R. 4–5.)

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

J. CRAWFORD BIGGS,
Solicitor General.

WILLIAM STANLEY,
The Assistant to the Attorney General.

WILL G. BEARDSLEE,
Director, Bureau of War Risk Litigation.

WILBUR C. PICKETT,
FENDALL MARBURY,
CHARLES BUNN,
Special Assistants to the Attorney General.

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